IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1846 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TANSUKH SAMJU SAVALIYA & 3 - Petitioner(s)
Versus
SECRETARY (APPEALS) & 2 - Respondent(s)

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Appearance :
MR PJ KANABAR for Petitioners
MR MR MENGDEY, ASSTT. GOVERNMENT PLEADER for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/06/2007

ORAL JUDGMENT

1. Shri P.J. Kanabar, learned counsel for the petitioners; Shri M.R. Mengdey, learned AGP for the respondents.
2. The petitioners being aggrieved by the order dated 22.12.92 passed in Land-4-Appeal-128/92 by

the Collector, Junagadh and the order dated 14.11.1996 passed in SRC-JND-HKP-7/93 by the Deputy Secretary [Appeals], Revenue Department are before this Court with a complaint that the authorities could not set aside the order dated 16th January, 1991 passed by the Deputy Collector, Junagadh in RRT/Revision/No.7/88.

3. The short facts necessary for disposal of the present writ application are that one Vrajlal Bhagvanjii Dhakan, opponent no.3 before the Deputy Collector, was indebted to the Sales Tax Department as the Department was to recover certain dues. As the said Vrajlal Bhagvanji Dhakan did not discharge his liability, proceedings under the provisions of the Bombay Land Revenue Code were initiated against him. Notices were issued to the said Vrajlal Bhagvanji Dhakan on 20.12.84 under Section 200 of the Bombay Land Revenue Code. However, no attachment order was issued nor restraint order was made against the said Vrajlal Dhakan. It appears that on 2.1.85, the said Vrajlal Dhakan sold the land in dispute to the present petitioners. Almost after about one year and five months of the said sale, order of attachment was issued. As the petitioners had already purchased the property and became owner, nothing was required to be done in the matter, but proceedings were initiated before the Deputy Collector, Junagadh on the ground that the sale was illegal. The petitioners appeared before the

authority and contended that before the order of attachment or any restraint order was passed against the transfer of the land, the said original owner Vrajlal Dhakan was entitled to alienate the property and in any case, even if certain dues were to be discharged, sale wold not become void or voidable at the instance of the department. However, the Deputy Collector held that there was genuine sale and the petitioners had become owner of the property. Sales Tax Officer, being aggrieved by the said order of the Deputy Collector filed the above referred appeal which was allowed on 22nd December, 1992 and as the revision against the said order proved futile, the petitioners are before this Court.

4. Shri P.J. Kanabar, learned counsel for the petitioners submits that if the authorities wanted to rely upon the notice to show cause or the notice asking recovery, then, the authorities should also have seen that in absence of order of attachment, rights of the Sales Tax Department qua the property would not come in existence. His submission is that if an order of attachment was made against the said Vrajlal Dhakan and if contrary to the order of attachment he transferred the property, then only, sale would become void. After going through the records available in this brief, firstly I must record that there is no counter affidavit filed by the State. Be that as it may.

From the orders passed by the Collector and the Revenue Department, it does not appear that any order of attachment was ever issued. It would be trite to hold that in absence of order of attachment or order restraining the owner/holder from transferring right, title or interest and possession, such person would be entitled to alienate the property and transfer possession. In any case, such transfer even otherwise would not be void, because, such person after purchasing the property can always discharge the liability by making payment of dues standing against the original owners and the State cannot say that it would not accept the sale deed. A private party before attachment can always sell the property to earn money and may discharge the liability, but the worst against the purchaser would be that if there was any charge over the property, then, the property would pass with the charge. In the present matter, no charge was created on the property.

5. The Collector so also the Revenue Department were unjustified in not appreciating the legal position. The orders passed by the Collector and the Revenue Department are set aside and the order passed by the Deputy Collector is restored. The petition is allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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